

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	C.A. No. 0910003722
	)	
WILLIAM B. MILLS,	)	
	)	
Defendant.	)	

Submitted: June 29, 2010

Decided: July 22, 2010

Michael F. Tucker, Esquire  
Assistant Public Defender  
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**DECISION ON DEFENDANT'S MOTION TO DISMISS**

Defendant William Mills (hereinafter "Mills") move pursuant to Court of Common Pleas *Criminal Rule 12(b)* to dismiss the charges brought by Information on the basis that; (1) the prosecution is barred by double jeopardy; (2) the facts upon which this prosecution is premised was decided by the Family Court which is a court of competent jurisdiction and as such that decision must be considered a final determination in this case; (3) the defendant was found not guilty in the Family Court for the charge of violating a no

contact order on October 26, 2009, since the alleged charges which the State brings Information arises out of the same alleged acts, this prosecution is barred by the principles of *res judicata*.

### **Facts**

Prior to April 3, 2009, Mills and Zulene Mayfield (hereinafter “Mayfield”) were married. Following dissolution of the marriage, but at some time before April 3, 2009, there was a domestic violence related incident between Mills and Mayfield.<sup>1</sup> As a result of this incident, on April 3, 2009, a protection from abuse no-contact order was entered in Family Court, prohibiting Mills from having any contact with Mayfield. On May 7, 2009, there was a second protection from abuse no-contact order entered in Family Court, prohibiting Mayfield from having contact with Mills.

On July 5, 2009, Mills was arrested for Offensive Touching. This charge arose out of an incident where Mills allegedly struck Mayfield in the stomach and pushed her. As a condition of release, on July 6, 2009, the Justice of Peace Court issued an order requiring Mills to have no contact with Mayfield.<sup>2</sup> After his release, Mills filed a *pro se* motion for contempt of order of protection from

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<sup>1</sup> The precise date is unclear, but at some point between April 3, 2009 and July 5, 2009, Mills and Mayfield were divorced.

<sup>2</sup> It is important to note at this time that there were two (2) active No Contact Orders requiring that Mills have no contact with Mayfield: the April 3, 2009 Protection from Abuse No Contact Order issued in Family Court; and the July 6, 2009 No Contact Order issued by Justice of the Peace Court # 11.

abuse in Family Court against Mayfield,<sup>3</sup> on July 9, 2009, and the State responded to the motion on July 12, 2009. On July 22, 2009, the Family Court issued an order modifying the no contact order.<sup>4</sup> Pursuant to this modification, Mills could contact Mayfield through a third person, and retrieve personal property from the communal residence provided the New Castle County Police was present.

On October 2, 2009 Mayfield filed a *pro se* motion for contempt of order of protection from abuse in Family Court. The motion alleges various violations by Mills of the April 3, 2009 protection from abuse order including: (1) on July 5, 2009, Mills was arrested by New Castle County Police for “kneeing and pushing me in our home;” (2) on September 15, 2009, Mills parked outside of Mayfield’s residence; (3) on September 28, 2009, Mills sent Mayfield email messages; (4) on September 29, 2009, Mills drove “by and around” Mayfield’s residence; and (5) Mills made phone calls to Mills and Mayfield’s son and daughter, in common, cursed at and threatened them.

On October 5, 2009, New Castle County Police investigated Mayfield’s claim that Mills violated the no contact order.<sup>5</sup> Corporal Lynda M. Scelsi (hereinafter “Scelsi”), of the New Castle County Police Department, filed an

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<sup>3</sup> The current status of this claim is not reflected in the record.

<sup>4</sup> It is unclear whether the July 22, 2009 modification of no contact order operated to modify the April 3, 2009 Protection from Abuse No Contact Order, the July 6 Condition of Release No Contact Order, or both.

<sup>5</sup> It is unclear whether Mayfield contacted NCCPD independently, or whether NCCPD was contacted as a result of Mayfield filing the Motion for Contempt of Order of Protection from Abuse in Family Court on October 2, 2009.

affidavit of probable cause, which related the following events: (1) on July 10, 2009, Mills went to Mayfield's residence and changed the lock on an outdoor shed; (2) on September 14, 2009, Mills parked on the street outside Mayfield's residence and spoke with their son; (3) on September 28, 2009, Mills sent Mayfield two (2) emails containing pictures of himself; and (4) on September 29, 2009, Mills drove around Mayfield's residence several times. The affidavit notes that Mayfield indicated to Scelsi that she "is tired of...Mills...violating the no contact order that has been issued since he was arrested." Also, Scelsi wrote that she located an "active no contact order from [July 6, 2009]...which shows...Mills is violating a condition of bail." Mills was charged with five (5) counts of Breach of Release.

On October 7, 2009, trial was held in Family Court on the July 5, 2009 Offensive Touching charge. Mills was found not guilty. After trial, Mills turned himself in to New Castle County Police on the Breach of Release charges.

On October 26, 2009, a hearing was held in Family Court on Mayfield's October 2, 2009 *pro se* motion for contempt of order of protection from abuse<sup>6</sup> in Family Court. Mills was found not guilty with the Court concluding, "[Mayfield]...failed to prove abuse by a preponderance of the evidence after a hearing."

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<sup>6</sup> Referring to Mayfield's April 3, 2009 Protection from Abuse order against Mills.

On November 4, 2009, the instant charges of Breach of Release were formally filed in this Court. Trial was originally scheduled for January 7, 2010, but was rescheduled upon Mills' request. Mills and the State stipulated that the State would file a new information. This new information was filed on January 21, 2010. It charges five (5) counts of Breach of Release in violation of 11 *Del. C.* § 2113(c)(2), based on the following alleged incidents: (1) on July 10, 2009 Mills entered Mayfield's property and changed the lock on a shed; (2) on September 14, 2009, Mills parked on the side of Mayfield's residence and spoke to his son; (3-4) on September 28, 2009, Mills sent Mayfield two (2) separate emails to Mayfield; and (5) on September 29, 2009, Mills "drove around" Mayfield's residence. Alleged in all five (5) counts of the information, the State maintained the offenses are based upon the July 6, 2009 no contact order issued by Justice of the Peace Court, "as modified by a Family Court Order dated July 22, 2009."

### **Analysis**

Mills filed a Motion to Dismiss on March 4, 2010. Mills argues that because he was found not guilty of contempt of order of protection from abuse on October 26, 2010, the instant criminal charges of breach of release, arising out of the same conduct, is barred by the Double Jeopardy Clause of the United States and Delaware Constitutions. The State argues the contempt of

the protection from abuse order is civil, and therefore the instant charges of breach of release are not barred, because jeopardy has not attached.

Article I of the Delaware Constitution of 1897,<sup>7</sup> Section Eight (8) governs Double Jeopardy, and provides, “no person shall be for the same offense twice put in jeopardy of life or limb.”<sup>8</sup> Similarly, the Fifth Amendment of the United States Constitution provides: “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.”<sup>9</sup>

The Supreme Court of the State of Delaware recognizes that this provision protects against subsequent prosecution for the same offense after acquittal or conviction, and multiple punishments for the same offense.<sup>10</sup> In order for this clause to protect against subsequent prosecution, the previous prosecution must be “*essentially criminal*.”<sup>11</sup> It is undisputed that double jeopardy “only prohibits twice punishing a person *criminally* for the same offense [and that] the State *may impose both* a criminal and civil penalty for the same act.”<sup>12</sup>

In determining whether a proceeding is civil or criminal for purposes of double jeopardy analysis, courts look to the legislative purpose of the statute authorizing the initial proceeding, and the burden of proof required for

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<sup>7</sup> As amended.

<sup>8</sup> DEL. CONST., art. I, § 8.

<sup>9</sup> U.S. CONST., amend. V.

<sup>10</sup> *Tarr v. State*, 486 A.2d 672, 674 (Del. 1984)(citing *Ohio v. Johnson*, 467 U.S. 493, 497-99 (1984)).

<sup>11</sup> *Breed v. Jones*, 421 U.S. 519, 528-29 (1975)(emphasis added).

<sup>12</sup> *State v. Manista*, 651 A.2d 781, 785 (Del. Fam. Ct. 1994)(citing *Tarr v. State*, 486 A.2d 672, 675 (Del. 1984))(emphasis added).

conviction.<sup>13</sup> In *Tarr v. State*, the Court determined that elective enrollment in the first offenders program does not preclude subsequent prosecution for vehicular homicide arising out of the same conduct.<sup>14</sup> The Court noted that the legislative purpose of the program was to allow first offenders to choose between criminal adjudication and an administrative proceeding without adjudication of guilt.<sup>15</sup> The Court found that the “thrust of the program” is rehabilitation, not punishment, and therefore the imposition of penalties does not trigger double jeopardy.<sup>16</sup>

In *State v. Manista*, the court similarly examined whether adjudication of a petition for protection from abuse operates to preclude subsequent criminal prosecution for harassment charges arising out of conduct alleged in the petition for protection from abuse.<sup>17</sup> The court held that petitions for protection from abuse are civil proceedings, based on the legislative intent of protection from abuse and the burden of proof required.<sup>18</sup> The legislative intent of the Protection from Abuse Act is “to help protect the victim from further acts of violence or abuse” and not punishment.<sup>19</sup> Also, the burden of proof is “by a preponderance of the evidence.”<sup>20</sup> Finally, these petitions are generally

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<sup>13</sup> *Tarr v. State*, 486 A.2d 672 (Del. 1984); *Manista*, 651 A.2d at 784-85.

<sup>14</sup> *Tarr*, 486 A.2d at 673-75.

<sup>15</sup> *Id.* at 675.

<sup>16</sup> *Id.*

<sup>17</sup> *State v. Manista*, 651 A.2d 781.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 784-85.

<sup>20</sup> *Id.*

“prosecuted by the petitioner, usually the victim.”<sup>21</sup> Therefore, petitions for protection from abuse are civil proceedings, and jeopardy does not attach for purposes of subsequent criminal prosecution.<sup>22</sup>

Motions for contempt of protection from abuse order can be either civil or criminal proceedings. Title 10 of the Delaware Code, Section 1046 governs sanctions for violation of protective orders and provides, “[a]ll protective orders issued under this part shall state that violations *may* result in: (1) [a] finding or contempt; (2) [c]riminal prosecution; and (3) [i]mprisonment or fine or both.”<sup>23</sup> Also, “[i]t shall be unlawful...to knowingly violate a protective order...[and] shall be punishable as a class A misdemeanor.”<sup>24</sup> However, Section 1046 succinctly states that “[n]othing in this subsection shall preclude the filing of a *civil contempt petition by the petitioner for violations of a protective order* issued under this part.”<sup>25</sup>

The facts here clearly indicate the motion for contempt of the protection from abuse order in this case was a *civil proceeding*, and therefore, double jeopardy is not implicated upon subsequent prosecution for the same conduct.<sup>26</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 10 *Del. C.* § 1046(d)(emphasis added).

<sup>24</sup> 10 *Del. C.* § 1046(e)

<sup>25</sup> *Id.*(emphasis added).

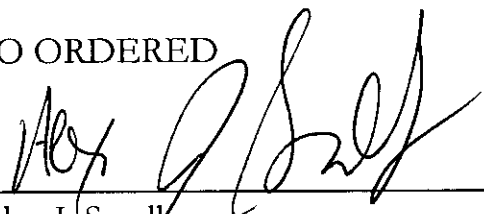
<sup>26</sup> Much ink was spilled in briefing regarding whether the averments in Mayfield’s October 2, 2009 Motion for Contempt of Order of Protection from Abuse, Scelsi’s October 5, 2009 affidavit of probable cause, and the Information filed by the State on January 21, 2010 are identical. Even assuming, as Mills does, that any



This is evident by both the legislative purpose of the protection from abuse act, and the burden of proof at the initial proceeding. As the Court held in *Manista*, the purpose of the protection from abuse act is “to help protect the victim from further acts of violence or abuse” and not punishment.<sup>27</sup> Additionally, the record reflects that Mills was found not guilty of contempt of order of protection from abuse on October 26, 2009, because “[Mayfield]...failed to prove abuse *by a preponderance of the evidence* after a hearing.” This ruling by the Court indicates the matter was civil in nature rather than criminal. Thus, the facts lead to only one conclusion, that the October 26, 2009 proceeding was *essentially* civil.

Because the October 26, 2009 proceeding was civil I do not find that the charges herein are barred by the double jeopardy clause of the Delaware or the United States Constitution, nor are they barred as *res judicata*. Therefore, Defendant’s motion to dismiss is DENIED. The Clerk will schedule the matter for trial.

SO ORDERED

  
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Alex J. Smalls  
Chief Judge

Mills-OP July 20 2010

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differences in these documents are attributable to miscommunication and typographical errors, the analysis in the Court’s opinion is unchanged.

<sup>27</sup> *State v. Manista*, 651 A.2d at 784-85.